

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

75-1179

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P75-

United States Court of Appeals
For the Second Circuit

Docket No. 75-1179

UNITED STATES OF AMERICA,

Appellee,

against

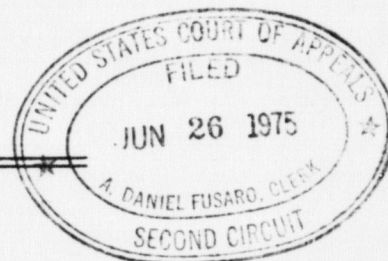
DOMINICK SANTIAGO,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

GRUNEWALD, TURK, GILLEN & FORD
Attorneys for Appellant
233 Broadway
New York, New York 10007
(212) 964-1400



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DOCKET ENTRIES

73 CR ^{2a} 702

PLATT, J. ~~HEATER~~

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.: M. POLLACK
DOMINICK SANTIAGO a/k/a Nick Sands	
RENEE SIMINOFISKY, a/k/a Renee Sims	
KENNETH BELLSEY	
For Defendant: Siminofisk	
Santiago-Michael Gill	
16 Court Street, Bk	
N.Y.	

Did conspire to steal and convert to their own use
funds of Welfare plan, etc.

ABSTRACT OF COSTS		AMOUNT	DATE	NAME	CASH RECEIVED AND DISBURSED		RECEIVED	OF
File,	(Santiago)	110-77 80	11-18-73	Notice of appeal	SANTIAGO	5	-	
Clerk,			4-21-75	Paid to Treas				
Marshal,								
Attorney,								
Commissioner's Court,								
Witnesses,								

DATE	PROCEEDINGS
7-25-73	Before MISHLER, CH J - Indictment filed
8/3/73	Before, MISHLER, CH.J.- Case called- Deft Santiago and Siminofisk present with counsel- Deft Bellsey not present- Defts Santiago and Siminofsky arraigned and enter a plea of not guilty- Bail contd- Sept. 10, 1973 for all motions
8/3/73	Notices of Appearance filed for Defts Siminofsky and Santiago
8/17/73	Before DOOLING, J.- Case called- Adjd to 8/24/73
8/24/73	Before DOOLING, J.- Case called- Deft Bellsey present - Deft/not g
8/24/73	By DOOLING, J.- Order appointing counsel filed- Financial affidavit B (KENNETH BELLSEY)
9-11-73	Notice of Motion filed, ret. 9-21-73, for Bill of Particulars, Discovery (Santiago & Siminofsky)

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73 CR 702

PROCEEDINGS

DATE	
1/19/73	Magistrates file 73M1300 inserted into Criminal file 73CR702
2-21-73	By NEAHER, J - Motion is denied without prejudice to a Rule 16(b) motion on proper showing except that the Govt will supply deft Santiago with a list of the checks referred to in the overt acts in count 1 and in other counts, the list to give, date, check number, maker, and proper name and aliases deleted from caption of indictment. S o Ordered (see Order on reverse of motion papers)
2/21/73	Before NEAHER, J.- Case called- Deft's motion for an order allowing discovery and inspection argued and granted and denied as indicated- Order signed (with endorsement on back of motion papers) (DOMINICK SANTIAGO)
10/12/73	Before NEAHER, J.- Case called- Deft motion to extend bail limits to include Conn.-Motion granted on consent.
11-8-73	Notice of readiness for trial filed
11-8-73	Govt's Bill of Particulars filed
11-30-73	Notice of motion to suppress filed ret. 12-6-73 (SIMINOFKY)
11-30-73	Notice of motion for severance filed ret. 12-6-73 (BELLSEY)
12-6-73	Before NEAHER, J.- Case called- Motion to suppress adjd to 3-11-73 and motion to sever adjd to 3-11-73
3-11-74	Before NEAHER, J.- Case called- Adjd to 6-17-74 on consent of A.U.S.A. Del Grosso
3-13-74	By NEAHER, J.- Order filed that the bail limits of deft Bellsey are extended to include the U.S. and Puerto Rico pending the final resolution of his case (order dated 3-11-74)
3-13-74	By NEAHER, J.- Order filed that the bail limits of deft BELLSEY are extended to include the United States and Puerto Rico pending the final resolution of his case
5-24-74	Before PLATT, J.- Case called- Adjd to 5-31-74 at 10:00 A.M.
5-31-74	Before PLATT, J.- Case called- Adjd to 6-14-74 at 10:00 A.M.
6-14-74	Before PLATT, J.- Case called- Defts and counsel present- Deft Bellsey's motion for severance- motion denied- Adjd to 9-9-74 for trial
6-17-74	Before NEAHER, J - case called - respectfully reassigned to Judge Platt. (motion to suppress)
9-9-74	Before Platt, J - case called - adjd to 9-16-74 (for trial)
9/16/74	Before PLATT, J.- Case called- Marked ready and passed.
10/18/74	Before PLATT, J.- Case called- Adjd to 11/8/74
11/8/74	Before PLATT, J.- Case called- Certificates of engagement issued to Mr. Gillen and Mr. O'Brien- Adjd to 11/22/74 to set date for trial
11/22/74	Before PLATT, J.- Case ready and waiting

CRIMINAL DOCKET

DATE	PROCEEDINGS
1/16/75	Govt's memorandum of law filed
1/20/75	Before PLATT, J.- Case called- Defts and counsel present- Trial ord and begun-Govt motion to sever as to deft BELLSEY- motion granted- 12 dismissed on stipulation- Deft SIMONOFKY motion to suppress or and begun- Motion argued- motion denied- Hearing concluded- Trial and begun- Jurors selected and sworn- Trial contd to 1/21/75
1-21-75	Before PLATT, J - case called - trial resumed - Trial continued to Jan. 22, 1975. filed
1-22-75	Letter dated 9-9-74/in support of an application for an order requiring deft Kenneth Bellsey to give testimony etc. received from Chambers; Application and Affidavit of Donald McCaffrey fil
1-22-75	By PLATT, J - Order filed (dated Jan. 20, 1975) that deft KENNETH BELLSEY answer all questions directed to him during tri shall not be excused from producing books, papers or other evidence on the ground that testimony or evidence required of him may tend to incriminate him or subject him to a penalty of forfeiture and further Ordered that no testimony or information compelled under this order (or any information directly or indirectly derived from such testimony may be used against the deft in any criminal case except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.
1-22-75	Before PLATT, J - case called - trial resumed - Trial contd to Jan. 23, 1975.
1-23-75	Before PLATT, J - case called - Trial resumed Trial contd to Jan. 27, 1975.
1-27-75	Before PLATT, J - case called - trial resumed - trial contd to Jan. 28, 1975.
1-28-75	Before PLATT, J - case called - trial resumed - Trial contd to Jan. 29, 1975.
1-29-75	Before PLATT, J -case called - trial resumed -Deft SANTIAGO motion for a severance and for a mistrial - motion denied - Trial contd to 1-30-75.
1-30-75	Before PLATT, J -case called - trial resumed - Trial contd to Feb, 3, 1975.
2/3/75	Before PLATT, J.- Case called- Defts and counsel present- Trial re Trial contd to 2/4/75

DATE	PROCEEDINGS
1/4/75	Before PLATT, J.- Case called- Defts and counsel present- Trial resumed
	Count 8 dismissed on consent- Trial contd to 2/5/75
2-5-75	Before PLATT, J - case called - trial resumed - deft SIMINOFISKY motion
	to dismiss count 6 - granted - deft SIMINOFISKY motion to dismiss and for
	a directed judgment of acquittal - denied - deft SANTIAGO motion to
	dismiss and for a directed judgment of acquittal - denied - Govts.
	motion to reopen case withdrawn - Trial contd to 2-6-75.
2-6-75	Before Platt, J - Case called - trial resumed - Jury retires to deli-
	berate - Order of sustenance signed - trial contd to 2-7-75.
2-6-75	By Platt, J - Order of Sustenance filed
7-75	Govts Memorandum of Law filed admissibility of Secondary Evidence
	and Summaries and Charts
2-7-75	12 stenographers transcripts filed (one of Jan. 20, 1975; 2 dated 1-21-75;
	one dated Jan. 22, one dated Jan. 23, one dated Jan. 27, Jan. 28, Jan. 29,
	Jan. 30; Feb. 3, Feb. 4 and Feb. 5, 1975)
2-7-75	Before PLATT, J - case called - defts Santiago & Siminofsky &
	counsels present - trial resumed - Jury returns with a verdict of
	guilty on counts 4, 5, 7, 9, 10 & 11 as to deft Santiago and not guilty
	as to deft Renee Siminofsky - Jury polled and Jury discharged - trial
	concluded - bail contd as to deft Santiago. Sentence adjd without date.
2-7-75	By PLATT, J - Judgment of Acquittal filed as to deft SIMINOFISKY.
2-7-75	By PLATT, J - Order of Sustenance filed (Luncheon 14 persons)
2-10-75	Stenographers transcript filed dated 2-7-75. (pgs 1906 to 1929)
2-10-75	Govts requests to charge filed.
2-13-75	Stenographers transcript filed dated Feb. 6, 1975. (pgs 1797 to 1905a)
2/21/75	Notice of motion to set aside verdict and dismiss indictment, etc. filed
	Govts 2/28/75 (SANTIAGO)- Accompanying ^{copy of} decision (U.S. vs Crispino) filed
2/27/75	Memorandum of law filed and answering affidavit opposing motion to
	set aside verdict
2/28/75	Before PLATT, J.- Case called- Deft's motion to dismiss the indictment-
	Motion argued-Motion denied (R. SANTIAGO)
4-11-75	Before PLATT, J - case called - deft SANTIAGO & counsel Michael Gillen
	present; defts oral motion to set aside the verdict is denied; Deft is
	sentenced on each of counts 4, 5, 7, 9, 10 & 11 to a term of imprisonment
	of 5 years/ on condition that he serve in a jail type insititution for
	a period of six years 6 months/and execution of remainder of the
	sentence is suspended and the deft is placed on probation for 4 yrs
	on each count-
	confinement to be served concurrently on each count; deft is fined the sw

[illegible]

7a

JUDGMENT AND COMMITMENT

United States of America vs.

United States District Court for Eastern District of New York

DEFENDANT

DOMINICK SANTIAGO

DOCKET NO. 73 CR 702

M'FILED

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
4	11	1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Michael Gillen, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. counts 4, 5, 7, 9, 10 & 11

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.Code, Secs. 664, 1027 and T-29, U.S.C.Sec. 501(c) in that from on or about Jan. 1, 1968 up to and including Dec. 31, 1970 both dates being approximate and inclusive, the defendant, with another, did embezzle, steal, and unlawfully convert to his own use, sums of money from an employee welfare benefit plan established and maintained by Local 3108, an employee organization in an industry affecting commerce within the purview of the Welfare & Pension Plans Disclosure Act.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years on count 4 pursuant to T-18, U.S.C.Sec. 3651 on condition that the defendant be confined in a jail-type institution for a period of 6 months the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of 4½ years and that the defendant shall pay a fine in the sum of \$500; on count 5 the defendant is sentenced to a term of imprisonment of 5 years pursuant to T-18, U.S.C.Sec. 3651 or condition that the defendant be confined in a jail-type institution for a period of 6 months, such confinement to be served concurrently with the confinement imposed under Count 4, execution of the remainder of sentence is suspended and the defendant is placed on probation for a period of 4½ years and the defendant shall pay a fine in the sum of \$500; on count 9 the defendant is sentenced to a term of imprisonment of 5 years pursuant to T-18, U.S.C.Sec. 3651 on condition that the defendant be confined in a jail-type institution for a period of 6 months, such confinement to be served concurrently with the term of imprisonment imposed under counts 4 & 5 of the indictment, the execution of the remainder of the sentence is hereby suspended and the defendant is placed on probation for a period of 4½ years and defendant shall pay a fine in the sum of \$500; on count 10 the defendant is sentenced to a term of imprisonment of 5 years pursuant to T-18, U.S.C.Sec. 3651 on condition that the defendant be confined in a jail-type institution for a period of 6 months, such confinement to be served concurrently with the confinement imposed under counts 4, 5 & 7, the execution of the remainder of sentence is suspended and the defendant is placed on probation for 4½ years and shall pay a fine in the sum of \$1,000.00 (contd on next page)

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT RECOMMENDATION

SIGNED BY

☐ U.S. District Judge☐ U.S. Magistrate

FILED
CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 11 1975

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

TIME A.M.
P.M.

Date

4-14-75

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

DOMINICK SANTIAGO

JUDGMENT & COMMITMENT AND
ORDER OF PROBATION

73 CR--702

On count 10 of the indictment the defendant is hereby sentenced to imprisonment pursuant to T-18, U.S.Code, Sec. 3651 for a period of 5 years on condition that the defendant be confined in a jail-type institution for a period of 6 months, such confinement to be served concurrently with the confinement on counts 4, 5, 7 & 9, the execution of the remainder of sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of 4½ years and the defendant shall pay a fine of \$3,000.00; On count 11 of the indictment the defendant is hereby sentenced to imprisonment pursuant to T-18, U.S.Code, Sec. 3651 for a term of 5 years on condition that the defendant be confined in a jail-type institution for a period of 6 months, such confinement to be served concurrently with the confinement on counts, 4, 5, 7, 9 & 10 the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of 4½ years and the defendant shall pay a fine in the sum of \$3,000.00. The sum total of fines is \$10,500.00.

10a

INDICTMENT

11a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

-v-

Stucken
DOMINICK SANTIAGO, ~~a/k/a Nick Santos~~
RENEE SIMINOFKY, ~~a/k/a Renee Simino~~
KENNETH BELLSEY

Defendants

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

★ JUL 25 1973 ★

TIME A.M.
P.M.

INDICTMENT

18 U.S.C. 664,
18 U.S.C. 1027
29 U.S.C. 439 (c)
29 U.S.C. 501 (c)
18 U.S.C. 2

73CR 702

-----x
THE GRAND JURY CHARGES:

COUNT ONE

1. That at all times referred to hereinafter The Brotherhood Welfare Fund of Local Union 3108, was an employee Welfare benefit plan, engaged in an industry affecting commerce, all within the purview of the Welfare and Pension Plans Disclosure Act, as amended, (Chapter 10, Title 29 United States Code), hereinafter referred to as the Act.
2. That at all times referred to in this indictment Dominick Santiago was the Trustee and Administrator of the Brotherhood Welfare Fund of Local Union 3108, all within the meaning of the Act.
3. That at all times referred to in this indictment Renee Siminofsky was the bookkeeper and clerical employee of the Brotherhood Welfare Fund of Local Union 3108, all within the meaning of the act.
4. That between December 1, 1970 and December 31, 1971 Kenneth Bellsey was employed as a business agent of Local Union 3108.
5. That from on or about the 1st day of January 1968 and continuously thereafter up to and including the date of the filing of the indictment, in the Eastern District of New York and elsewhere the defendant Dominick Santiago, the defendant Renee Siminofsky and the defendant Kenneth Bellsey, willfully and knowingly did combine, conspire, confederate, and agree together and with each other, and with diverse other persons whose names are to the Grand Jury unknown, to commit an offense against the United States, that is to embezzle, steal, and unlawfully and willfully convert to their own use and the use of the General Fund of Local 3108 the sum of fourteen thousand seven hundred seventy seven dollars and three cents (\$14,777.03), the money and property of said Welfare Fund, all in violation of said Act (18 United States Code, §664 and 371).

6. It was further a part of said conspiracy that Dominick Santiago and Renee Siminofsky would post welfare fund contributions of Authority Trucking and Rental Corporation to the cash receipts account of the General Fund of Local 3108.

7. It was further a part of said conspiracy that Dominick Santiago and Renee Siminofsky would post welfare fund contributions of Bedford Bowl, Incorporated to the cash receipts account of the General Fund of Local 3108.

8. It was further a part of said conspiracy that Dominick Santiago and Renee Siminofsky would post welfare fund contributions of Caruso Foods Incorporated to the cash receipts account of the General Fund of Local 3108.

9. It was further a part of said conspiracy that Dominick Santiago and Renee Siminofsky would post welfare fund contributions of Green Acres Bowl Incorporated to the cash receipts account of the General Fund of Local 3108.

[10. It was further a part of said conspiracy that Dominick Santiago and Renee Siminofsky would post welfare fund contributions of ~~Bedford~~ Recreation, Incorporated to the cash receipts account of the General Fund of Local 3108.]

11. It was further a part of said conspiracy that Kenneth Bellsey would act as a Business Agent for Local 3108 and receive part of his compensation from the Brotherhood Welfare Fund.

OVERT ACTS

At all times hereinafter mentioned, the defendants committed the following overt acts in furtherance of said conspiracy and to effect the objects thereof:

1. On or about June 22, 1968, within the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky obliterated the word welfare from check number 6662 issued by Caruso Foods Inc.

2. On or about December 10, 1969, within the Eastern District of New York the defendant Dominick Santiago and the defendant Renee Siminofsky entered check number 10639 from Authority Trucking and Rental Corp. as a receipt to the General Fund of Local 3108.

3. On or about April 20, 1969, within the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky entered check number 11620 from Bedford Bowl, Inc. as a receipt to the General Fund of Local 3108.

4. On or about June 25, 1971, the defendant ^{later} Kenneth Bellsey received a check drawn on the Brotherhood Welfare Fund.

(In violation of Title 18 United States Code, Section 371).

COUNT TWO.

1. All the allegations contained in paragraphs 1 through 4, inclusive, of the first count of the indictment are reaffirmed, realleged, and incorporated as if set forth in full.

2. From on or about February 1, 1969, up to and including December 31, 1969, both dates being approximate and inclusive, in the Eastern District New York, the defendant Dominick Santiago and the defendant Renee Siminofsky did embezzle, steal, and unlawfully and wilfully convert to their own use and the use of the General Fund of Local 3108 the sum of \$3,148.00 of the moneys and funds of the Brotherhood Welfare Fund of Local 3108, an employee welfare benefit plan established and maintained by Authority Trucking and Rental Corporation, a body corporate, which was then an employer engaged in an industry and activity affecting commerce within the purview of the Welfare and Pension Plans Disclosure Act, as amended, (Chapter 10, Title 29, United States Code) which said moneys and funds had come into the possession, and under the care of the defendant Dominick Santiago and the defendant Renee Siminofsky by virtue of their position as trustee and bookkeeper respectively of such Plan.

(Title 18, United States Code, Sections 664 and 2).

COUNT THREE

1. All the allegations contained in paragraphs 1 through 4, inclusive, of the first count of the indictment are reaffirmed, realleged, and incorporated as if set forth in full.

2. From on or about February 1, 1968, up to and including December 31, 1970, both dates being approximate and inclusive, in the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky, did embezzle, steal, and unlawfully and willfully convert to their own use and the use of others the sum of \$2,392.56 of the moneys and funds of the Brotherhood Welfare Fund of Local 3108, an employee welfare benefit plan established and maintained by Bedford Bowl, Incorporated, a body corporate, which was then an employer engaged in an industry and activity affecting commerce within the purview of the Welfare and Pension Plans Disclosure Act, as amended, (Chapter 10, Title 29, United States Code) which said moneys and funds had come into the possession, and under the care of the defendant Dominick Santiago and the defendant Renee Siminofsky by virtue of their position as trustee and bookkeeper respectively of such Plan.

(Title 18, United States Code, Sections 664, 2).

COUNT FOUR

1. All the allegations contained in paragraphs 1 through 4, inclusive, of the first count of the indictment are reaffirmed, realleged, and incorporated as if set forth in full.

2. From on or about January 1, 1968, up to and including December 31, 1968, both dates being approximate and inclusive, in the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky did embezzle, steal, and unlawfully and wilfully convert to their own use and the use of the General Fund of Local 3108, the sum of \$4,680.00 of the moneys and funds of the Brotherhood Welfare Fund of Local 3108, an employee welfare benefit plan established and maintained by Caruso Foods, Incorporated, a body corporate, which was then an employer engaged in an industry and activity affecting commerce within the purview of the Welfare and Pension Plans Disclosure Act, as amended, (Chapter 10, Title 29, United States Code) which said moneys and funds had come into the possession, and under the care of the defendant Dominick Santiago and the defendant Renee Siminofsky by virtue of their position as trustee and book-keeper respectively of such Plan.

(Title 18, United States Code, Section 664 and 2)

COUNT FIVE

1. All the allegations contained in paragraphs 1 through 4, inclusive, of the first count of the indictment are reaffirmed, realleged, and incorporated as if set forth in full.

2. On or about August 9, 1968, in the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky did embezzle, steal, and unlawfully and wilfully convert to their own use and the use of the General Fund of Local 3108 the sum of \$543.00 of the moneys and funds of the Brotherhood Welfare Fund of Local 3108, an employee welfare benefit plan established and maintained by Green Acres Bowl, Incorporated, a body corporate, which was then an employer engaged in an industry and activity affecting commerce within the purview of the Welfare and Pension Plans Disclosure Act, as amended, (Chapter 10, Title 29, United States Code) which said moneys and funds had come into the possession, and under the care of the defendant Dominick Santiago and the defendant Renee Siminofsky by virtue of their position as trustee and clerical employee respectively of such Plan.

(Title 18, United States Code, Sections 664, 2).

COUNT SIX

1. All the allegations contained in paragraph 1 through 4, inclusive, of the first count of the indictment are reaffirmed, realleged, and incorporated as if set forth in full.

2. From on or about May, 1968, up to and including December 31, 1969, both dates being approximate and inclusive, in the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky did embezzle, steal and unlawfully and wilfully convert to their own use and the use of the General Fund of Local 3108 the sum of \$566.00 of the moneys and funds of the Brotherhood Welfare Fund of Local 3108, an employee welfare benefit plan established and maintained by United Recreation, Incorporated, a body corporate, which was then an employer engaged in an industry and activity affecting commerce within the purview of the Welfare and Pension Plans Disclosure Act, as amended, (Chapter 10, Title 29, United States Code) which said moneys and funds had come into the possession, and under the care of the defendant Dominick Santiago and the defendant Renee Siminofsky by virtue of their position as trustee and clerical employee respectively of such Plan.

(Title 18, United States Code, Sections 654, 2).

COUNT SEVEN

1. All the allegations contained in paragraph 1 through 4, inclusive, of the first count of the indictment are reaffirmed, realleged and incorporated as if set forth in full.

2. From on or about December 1, 1970, up to and including July 1, 1971, both dates being approximate and inclusive, in the Eastern District of New York, the defendant Dominick Santiago and the defendant ^{with} Kenneth Bellsey did embezzle, steal and unlawfully and wilfully convert to their own use and to the use of the General Fund of Local 3108 the sum of \$3,049.89 of the moneys and funds of the Brotherhood Welfare Fund of Local 3108, an employee welfare benefit plan established and maintained by Local 3108 on employee organization engaged in an industry affecting commerce and Authority Trucking and Rental Corporation, Bedford Bowl, Incorporated, Caruso Foods, Incorporated, Green Acres Bowl, Incorporated, and United Recreation Incorporated, and other body corporates, which were then employers engaged in an industry and activity affecting commerce within the purview of the Welfare and Pension Plans Disclosure Act, as amended, (Chapter 10, Title 29, United States Code) which said moneys and funds had come into the possession, and under the care of the defendant Dominick Santiago by virtue of his position as trustee of such Plan.

(Title 18, United States Code, Sections 664, 2).

COUNT EIGHT

23, 1971

Dunn

[From on or about December 1, 1970, up to and including December 31, 1970, both dates being approximate and inclusive,] in the Eastern District of New York, the defendant Dominick Santiago did embezzle, steal, and unlawfully and wilfully convert to his own use the sum of \$397.58 of the moneys and funds of the Brotherhood Welfare Fund of Local 3108, an employee welfare benefit plan established and maintained by Local 3108 an employee organization engaged in an industry affecting commerce and Authority Trucking and Rental Corporation, Bedford Bowl, Incorporated, Caruso Foods, Incorporated, Green Acres Bowl, Incorporated, and United Recreation, Incorporated, and other body corporates, which were then employers engaged in an industry and activity affecting commerce within the purview of the Welfare and Pension Plans Disclosure Act, as amended, (Chapter 10, Title 29, United States Code) which said moneys and funds had come into the possession, and under the care of the defendant Dominick Santiago by virtue of his position as trustee of such Plan.

(Title 18, United States Code, Section 664).

COUNT NINE

On or about the 30th day of January 1969, in the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky wilfully did make a false statement of a material fact, knowing it to be false, in documents required by the Welfare and Pension Plans Disclosure Act, as amended, (29 U.S.C. §304), to be published, that is, copies of the annual report of the Brotherhood Welfare Fund, an employee welfare benefit plan, established and maintained by Local 3108, an employee organization engaged in an industry affecting commerce, and Authority Trucking and Rental Corporation, Bedford Bowl Inc., Caruso Foods, Inc., ^aGreen Acres Bowl, Inc., and United Recreation Inc., Caruso Foods, Inc., Green Acres Bowl, Inc., and United Recreation Inc., and other body corporates, which are employers engaged in an industry and activity affecting commerce for the fiscal year ended August 31, 1968, in that Dominick Santiago and Renee Siminofsky stated and represented in said report, published, signed and sworn to by the defendant Santiago as trustee of such Plan and prepared by the defendant Siminofsky as bookkeeper for the fund that employer contributions to the Welfare Fund totaled \$51,174.00, whereas, in truth and fact, as they then knew employer contributions to the fund totaled \$57,219.00.

(Title 18, United States Code, Section 1027)

COUNT TEN

On or about the 20th day of February, 1970, in the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky wilfully did make a false statement of a material fact, knowing it to be false, in documents required by the Welfare and Pension Plans Disclosure Act, as amended, (29 U.S.C. §304), to be published, that is, copies of the annual report of the Brotherhood Welfare Fund, an employee welfare benefit plan, established and maintained by Local 3108, an employee organization engaged in an industry affecting commerce, and Authority Trucking and Rental Corporation, Bedford Bowl Inc., Caruso Food, Inc., Green Acres Bowl, Inc., and United Recreation Inc., and other body corporates, which are employers engaged in an industry and activity affecting commerce for the fiscal year ended August 31, 1969, in that Dominick Santiago and Renee Siminofsky stated and represented in said report, published, signed and sworn to by the Defendant Santiago as trustee such plan and prepared by the defendant Siminofsky as bookkeeper for the fund that employer contributions to the Welfare Fund totaled \$54,729.50, whereas, in truth and fact, as they then knew employer contributions to the fund totaled \$59,263.50.

(Title 18, United States Code, Section 1027)

COUNT ELEVEN

From on or about the 1st day of January, 1968, up to and including the 31st day of December 1970, in the Eastern District of New York, Dominick Santiago, while an officer, that is President of Local Union Number 3108, a labor organization engaged in an industry affecting commerce, as defined by Sections 402 (i) and 402 (j), Title 29, United States Code, unlawfully and wilfully did embezzle, steal, abstract and convert to his own use the sum of \$891.18 of the moneys and funds of such organization.

(Title 29, United States Code, Section 501 (c))

COUNT TWELVE

On or about the 20th day of June 1968, in the Eastern District of New York, the defendant Dominick Santiago, being an officer, that is President of Local 3108 and the defendant Renee Siminofsky being Secretary-Treasurer of that union a labor organization engaged in an industry affecting commerce within the meaning of Sections 402 (i) and (j), Title 29, United States Code, wilfully and knowingly did make and cause to be made, a false entry in a record required to be kept by the said labor organization pursuant to Section 436, Title 29, United States Code, in that in the cash receipts book and general ledger, they did enter and record, and cause to be entered and recorded the sum of five hundred dollars (\$500.00) item as dues and initiation fees, which said entry was false and fictitious, as the defendants then knew.

(Title 29, U.S.C. Section 439(c), Title 18, U.S.C. Section 2)

COUNT THIRTEEN

On or about the 20th day of September, 1968, in the Eastern District of New York the defendant Dominick Santiago, being an officer, that is President of Local 3108 and the defendant Renee Siminofsky being Secretary-Treasurer of that union a labor organization engaged in an industry affecting commerce within the meaning of Sections 402 (i) and (j), Title 29, United States Code, wilfully and knowingly did make and cause to be made, a false entry in a record required to be kept by the said labor organization pursuant to Section 436, Title 29, United States Code, in that in the cash receipts book and general ledger, they did enter and record, and cause to be entered and recorded one thousand dollars (\$1,000.00) item as dues and initiation fees, which said entry was false and fictitious, as the defendants then knew.

(Title 29, United States Code, Section 439 (c))

(Title 18, United States Code, Section 2)

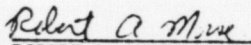
COUNT FOURTEEN

On or about the 20th day of October, 1968 in the Eastern District of New York, the defendant Dominick Santiago, being an officer, that is President of Local 3108 and the defendant Renee Siminofsky being Secretary-Treasurer of that union, a labor organization engaged in an industry affecting commerce within the meaning of Sections 402 (i) and (j), Title 29, United States Code, wilfully and knowingly did make and cause to be made, a false entry in a record required to be kept by the said labor organization pursuant to Section 436, Title 29, United States Code, in that in the cash receipts book and general ledger, they did enter and record, and cause to be entered and recorded one thousand five hundred dollars (\$1,500) item as dues and initiation fees, which said entry was false and fictitious, as the defendants then knew.

(Title 29, United States Code, Section 439 (c))
(Title 18, United States Code, Section 2)

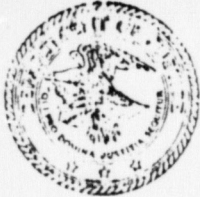
A TRUE BILL


FOREMAN


ROBERT A. MORSE (By, nsp)
United States Attorney

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SPECIAL ATTORNEY POLLACK'S LETTER OF AUTHORITY



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OFFICE OF THE DEPUTY ATTORNEY GENERAL

WASHINGTON, D.C. 20530

April 23, 1970

FILED

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U.S. DISTRICT COURT
EAST DISTRICT OF NEW YORK

Mr. Michael B. Pollack
Criminal Division
Department of Justice
Washington, D. C.

Dear Mr. Pollack:

As an attorney and counselor at law you are hereby specially retained and appointed as a Special Attorney under the authority of the Department of Justice to assist in the trial of the case or cases growing out of the transactions hereinafter mentioned in which the Government is interested. In that connection you are specifically directed to file informations and to conduct in the Eastern District of New York and in any other judicial district where the jurisdiction thereof lies any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States Attorneys are authorized by law to conduct.

The Department is informed that various persons, companies, corporations, firms, associations, and organizations to the Department unknown, have violated in the above-named district and in other judicial districts the laws relating to extortion in aid of racketeering (18 U.S.C. 1951), travel and transportation in aid of racketeering (18 U.S.C. 1952), transmission of bets, wagers, and related information by wire communications (18 U.S.C. 1084), interstate transportation of wagering paraphernalia (18 U.S.C. 1953), perjury (18 U.S.C. 1621), mail fraud (18 U.S.C. 1341), fraud by wire (18 U.S.C. 1343), interstate transportation of stolen property (18 U.S.C. 2314), wire and radio communication (47 U.S.C. 203 and 501), internal revenue (26 U.S.C. 7201-7206), and other criminal laws of the United States and have conspired to commit all such offenses in violation of Section 371 of Title 18 of the United States Code.

You are to serve without compensation other than the compensation you are now receiving under existing appointment.

Please execute the required oath of office and forward a duplicate thereof to the Criminal Division, Department of Justice.

Sincerely,

Richard G. Kleindienst
Deputy Attorney General

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CHARGE OF COURT

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

DOMINICK SANTIAGO and
RENEE SIMINOFKY, :

Defendants. :

-----x

73-CR-702

United States Courthouse
Brooklyn, New York

February 6, 1975
11:00 o'clock A.M.

B e f o r e :

HONORABLE THOMAS C. PLATT, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: DONALD MC CAFFREY, ESQ.
Assistant U.S. Attorney

MICHAEL GILLEN, ESQ.
Attorney for Defendant Santiago

THOMAS O'BRIEN, ESQ.
Attorney for Defendant Siminofsky

THE COURT: I guess we had better get them in.
I should say, I will give your language -- your charges
in substance but not verbatim, Mr. O'Brien.

MR. O'BRIEN: Fine, thank you.

(Jury present)

X X X

THE COURT: Now, ladies and gentlemen of the
jury, I am going to give you some instructions on
the law. For the most part, I will be reading these
instructions to you, which is going to require a lit-
tle extra diligence on your part in listening and
following the instructions as they are read.

I will try, however, to make them as clear
as possible. To begin with, as I think you all know,
and before I begin the normal parts of the charge,
perhaps I will give you just one or two bits of
background.

There are two defendants here on trial,
Dominick Santiago and Renee Siminofsky. There are
now eleven counts left for you to consider. If my
mathematics is correct, eleven of which state charges
against Dominick Santiago and nine of which state
charges against Renee Siminofsky.

You have to bear in mind, however, that with
respect to each charge where they are not named as

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CHARGE OF THE COURT 1825

1 THE COURT: I guess we had better get them in.
2
3 I should say, I will give your language -- your charges
4 in substance but not verbatim, Mr. O'Brien.

5 MR. O'BRIEN: Fine, thank you.

6 (Jury present) X X X

7 THE COURT: Now, ladies and gentlemen of the
8 jury, I am going to give you some instructions on
9 the law. For the most part, I will be reading these
10 instructions to you, which is going to require a lit-
11 tle extra diligence on your part in listening and
12 following the instructions as they are read.

13 I will try, however, to make them as clear
14 as possible. To begin with, as I think you all know,
15 and before I begin the normal parts of the charge,
16 perhaps I will give you just one or two bits of
17 background.

18 There are two defendants here on trial,
19 Dominick Santiago and Renee Siminofsky. There are
20 now eleven counts left for you to consider. If my
21 mathematics is correct, eleven of which state charges
22 against Dominick Santiago and nine of which state
23 charges against Renee Siminofsky.

24 You have to bear in mind, however, that with
25 respect to each charge where they are not named as

CHARGE OF THE COURT

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defendants, namely Counts 1, 2 through 5, 7, 9, 10, 13 and 14. Where they are both named as defendants are Counts 1, 2 through 5, 9, 10, 13 and 14.

You have to make a separate determination with respect to each and you must listen to the charge and particularly when I get down to discussing the indictment and essential elements with respect to bearing in mind you are going to make a determination with respect to each defendant separately.

Mr. Santiago is named as a defendant alone in Counts 7 and 11, and you will only, of course, be concerned with him alone in those counts. That I gave you by way of background so that when we get to discussing it you should keep that in mind.

All right, now that you heard the evidence and the argument, it becomes my duty to give the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court and to apply the rules of law so given to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law but must consider the

1 3 instructions as a whole. Neither are you to be con-
2 cerned with the wisdom of any rule of law, stated by
3 the Court, regardless of any opinion you have have
4 as to what the law ought to be.

5 It would be a violation of your sworn duty
6 to base a verdict upon any other view of the law than
7 that given in the instructions of the Court: just
8 as it would be a violation of your sworn duty as
9 judges of the fact to base a verdict upon anything
10 but the evidence in the case.

11 You must not permit yourselves to be governed
12 by sympathy, bias, prejudice or any other considera-
13 tions not founded on evidence and these instructions
14 on the law.

15 Justice in a trial by jury must always depend
16 upon the willingness of each individual juror to
17 seek the truth as to the facts from the same evidence
18 presented to all the jurors; and to arrive at a ver-
19 dict by applying the same rules of law as given in the
20 instructions of the Court.

21 You have been chosen and sworn as jurors in
22 this case to try the issues of fact presented by the
23 allegations of the indictment and the denial made
24 by the "Not Guilty" pleas of the accused.

25 You are to perform these duties without bias

1 4 or prejudice as to any party. Again, the law does
2 not permit jurors to be governed by sympathy, preju-
3 dice or public opinion.

4 Both the accused and the public expect that you
5 will carefully and impartially consider all the evi-
6 dence in the case, follow the law as stated by the
7 Court and reach a just verdict regardless of the con-
8 sequence.

9 I am not going to send the exhibits which have
10 been received in evidence with you as you retire for
11 your deliberation. You are entitled, however, to see
12 any or all of these exhibits as you consider your
13 verdict.

14 I suggest that you begin your deliberation and
15 then if it would be helpful to you, you may ask for
16 any or all of the exhibits simply by sending a note
17 to me through one of the deputy marshals.

18 Now, a couple of general instructions before
19 we get down to the indictment. An indictment is but
20 a form or method of accusing a defendant of a crime.
21 It is not evidence of any kind against the accused.

22 There are two types of evidence from which a
23 jury may properly find a defendant guilty of a
24 crime. One is direct evidence, such as the testimony
25 of an eye witness. The other is circumstantial

1 5 evidence.

2 Circumstantial evidence is the proof of facts
3 and circumstances which rationally imply the existence
4 of other facts because such other facts usually follow
5 according to the common experience of mankind.

6 A very simple example, the footprint of a man
7 in the sand implied to Robinson Crusoe that there
8 was another man with him on the desert island and
9 indeed there was, the man Friday.

10 That's what we mean by circumstantial evidence.
11 Thus, on the one hand you may have direct evidence
12 of an issue and on the other hand you may have cir-
13 cumstantial evidence of the issue.

14 The law does not hold that one type of evi-
15 dence is necessarily of better quality than the other.
16 The law requires only that the government prove its
17 case beyond a reasonable doubt on the direct and cir-
18 cumstantial evidence.

19 At times the jury may feel that circumstantial
20 evidence is of better quality. At other times they
21 may feel that direct evidence is of better quality.
22 That judgment is left entirely up to you.

23 As a general rule, the law makes no distinction
24 between direct and circumstantial evidence but simply
25 requires that, before convicting a defendant, the

1 6 jury be satisfied of the defendant's guilt beyond a
2 reasonable doubt from all the evidence in the case.

3 The law presumes the defendants to be innocent
4 of a crime. Thus, a defendant although accused, begins
5 the trial with a clean slate with no evidence against
6 him or her. And the law permits nothing but legal
7 evidence presented before the jury to be concerned in
8 support of any charge against the accused.

9 So, the presumption of innocence alone is
10 sufficient to acquit a defendant unless the juries
11 are satisfied beyond a reasonable doubt of the
12 defendant's guilt after careful and impartial consi-
13 deration of all the evidence in the case.

14 The burden is always upon the prosecution to
15 prove the guilt beyond a reasonable doubt. This
16 burden never shifts to a defendant, for the law
17 never imposes upon a defendant in a criminal case the
18 burden or duty of calling any witnesses or producing
19 any evidence.

20 A reasonable doubt does not mean a doubt
21 arbitrarily and capriciously asserted by a juror
22 because of his or her reluctance to perform an
23 unpleasant task.

24 It does not mean a duty arising from the
25 natural sympathy which we all have for others. It

1 7 is not necessary for the government to prove the guilt
2 of a defendant beyond all possible doubt, because if
3 that were the rule, very few people would ever be
4 convicted.

5 It is practically impossible for a person to
6 be absolutely sure and convinced of any contraverted
7 fact which, by its nature, is not susceptible of
8 mathematical certainty. In consequence, the law says
9 that a doubt should be a reasonable doubt, not an
10 impossible doubt.

11 A reasonable doubt is a doubt based upon reason
12 and common sense, the kind of doubt that would make
13 a reasonable person hesitate to act. Proof beyond
14 a reasonable doubt must therefore be proof of such
15 a convincing character that you would be willing to
16 rely and act upon it unhesitatingly in the most
17 important of your own affairs.

18 The jury will remember that a defendant is
19 never to be convicted on mere suspicion or conjecture.

20 Again, a reasonable doubt means a doubt suffi-
21 cient to cause a prudent person to hesitate to act
22 in the most important affairs of his or her life.

23 Now, before getting into a more detailed dis-
24 cussion of the various counts in the indictment, I
25 will give you a quick summary of the counts and then

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Charge of the Court

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Later I will read the counts to you more fully.

Count one, as you recall, pertains to both defendants and charges them with conspiracy to embezzle, steal or unlawfully and willfully abstract, convert to their own use or to the use of others monies or property of the Welfare Fund. That's the conspiracy count.

Counts two to five charge both defendants with embezzling, stealing or unlawfully and willfully abstracting and converting to their own use or to the use of others money or property of the Welfare Fund.

Count six was dismissed.

Count seven, you recall, charges the defendant Santiago and the witness Bellsey with embezzling, stealing, or unlawfully and willfully abstracting or converting to his own use or to the use of others monies or property of the Welfare Fund.

In each of the counts two to five and count seven, there is also an aiding and abetting section alleged which I will describe to you more fully later.

Count nine and count ten charge both defendants with making a false statement or representation of fact knowing it to be false in the annual financial statement of the Welfare Fund, namely, the D-2 statements, for the years ended August 31, 1968 and August 31, 1969.

Count 11 pertains solely to the defendant Santiago and, as you recall, charges him with embezzling, stealing or unlawfully and wilfully abstracting or converting to his own use monies and funds of the Union General Fund. That's distinguished from the Welfare Fund.

Count 12 was dismissed. And I should say Count 8 was also dismissed.

Counts 13 and 14 charge both of the defendants with wilfully making or causing to be made a false entry in any books, records, report or statement required to be kept by the Union pursuant to law. Those two counts also have an aiding and abetting section which is alleged to have been violated, which I will describe to you later on.

Now to get down to the specific counts in the indictment, I perhaps before I get down to the specific counts, you will recall at the outset of the trial I also read to you two stipulations, which are stipulations of fact, which are signed by the attorneys for the parties prior to trial. These stipulations of fact were marked in evidence, as I recall, at the outset of the trial. I will not read them again now, but you may ask for them, if you wish.

These are uncontroverted facts that the parties

1
2 have stipulated to. And if there is any doubt in your
3 mind as to whether any technical points have been met
4 by one or more of the Government's proof, perhaps it
5 will be well for you to look at these before you make
6 such a decision. Those statements of fact are in evi-
7 dence. I think they are the first two exhibits in
8 evidence.

9
10 Now, the various counts in the indictment charge
11 different sections of the law. Count one, for example,
12 charges violations of 18 U.S. Code, Sections 664 and 371.
13 Counts two, three, four, five, and seven charge viola-
14 tions of Title 18 U.S. Code, Sections 664 and 2. 2
15 is the aiding and abetting section.

16 Count eight was dismissed.

17 Counts 9 and 10 charge violations of Title 18
18 U.S. Code, Section 1027.

19 Count 11 charges a violation of Title 29 U.S. Code
20 Section 501(c).

21 Counts 13 and 14 charge violations of Title 29
22 Section 439(c) and also Title 18 U.S. Code Section 2,
23 that being the aiding and abetting section.

24 Before reading the particular counts to you from
25 the indictment I will first read the various sections
of the Code so you may have some understanding of the

laws which are alleged to have been violated.

Going back to Count 1, as you recall, it charges violations of Title 18 U.S. Code Sections 664 and 371.

I will read to you Section 664, but bear in mind that it again is repeated in Counts 2 to 5 and Count 7. So I won't read it again after that. It's also charged in Count 1 to have been violated.

That reads:

"Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or to the use of another, any of the monies, funds, securities, premiums, credits, property or other assets of any employee welfare benefit plan or employee pension benefit plan," shall be in violation of the law.

"As used in this section, the term, 'any employee welfare benefit plan or employee pension benefit plan,' means any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act."

Now, the parties have stipulated in the stipulation that I referred to that the welfare benefit plan in question here is subject to such act.

Section 371 of Title 18 of the Code provides in pertinent part that:

"If two or more persons conspire either to commit

any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be," in violation of the law.

Now, Counts 2 through 7, except Count 6 which has been dismissed, charge violations of Section 664 which I have just read to you, namely, any person who embezzles, steals, and so forth. These counts also charge a violation of Title 18 U.S. Code Section 2 which is the aiding and abetting section which I will discuss with you later in the charge.

Counts 9 and 10 of the indictment charge violations of Title 18 U.S. Code Section 1027 which reads in pertinent part as follows:

"Whoever, in any document required by the Welfare and Pensions Plans Disclosure Act to be published, or kept as part of the records of any employee welfare benefit plan or employee pension benefit plan, or certified to the administrator of any such plan, makes any false statement or representation of fact, knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact of the disclosure of which is required by such act or is necessary to verify,

explain, clarify or check for accuracy and completeness any report required by such act to be published or any information required by such act to be certified, shall be," in violation of the law.

Section 304 of Title 29 which is cited in Counts 9 and 10 provides:

"The administrator of an employee welfare benefit plan or an employee pension benefit plan shall publish in accordance with Section 307 of this Title to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report.

"The annual financial report is Form D-2.

"Such description and such report shall contain the information required by Sections 305 and 306 in such form and detail as the Secretary shall by regulations prescribe and copy thereof shall be executed, published and filed in accordance with the provisions of this chapter and the Secretary's regulations thereunder."

That's the end of that section.

The parties have agreed that there is no dispute but that Mr. Santiago was acting as an administrator, as that term is defined in the statute of the Welfare Plan.

Count 11 of the indictment charges a violation of

Title 29 U.S. Code Section 501(c). That's the count you will recall which is against Mr. Santiago alone, as well as Count 7. But this one also.

501(c) provides in pertinent part that:

"Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the monies, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be," in violation of the law.

Counts 13 and 14, the last two counts of the indictment, charge violations of Title 29 U.S. Code Section 439(c) which provides in pertinent part that:

"Any person who willfully makes a false entry in or willfully conceals, withholds, or destroys any books, records, reports or statements required to be kept by any provision of this subchapter, shall be" in violation of the law.

These last two counts also charge violations of Title 18 U.S. Code Section 2 -- that's the aiding and abetting section -- which I will discuss with you later.

These last two counts also cite Section 436 of Title 29 which reads as follows:

"Every person required to file any report under this subchapter shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, work sheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain."

Now, certain words are used in Sections 664 and 501(c) which I think perhaps should be defined for you.

First, with respect to the word "embezzlement": Embezzlement is defined as "the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come."

To prove an embezzlement, it must be proven beyond a reasonable doubt that there is (1) a trust or fiduciary relationship; (2) the property claimed embezzled is embraced within the meaning of the statute; (3) that it came into the possession or care of the accused by virtue of his employment; (4) it is property of another;

1 (5) that the accused's dealing therewith constituted a
2 fraudulent conversion or appropriation of the same to
3 his or her own use, or to the use of another -- in this
4 case, as you recall, in the statute -- and (6) such
5 was the intent to deprive the owner thereof.
6

7 With respect to the word stealing, this word is
8 used to denote any dishonest transaction whereby one
9 person obtains that which rightfully belongs to another
10 and deprives the owner of the rights and benefits of
11 ownership, but may or may not involve the element of
12 stealth. To steal means to take away from one in lawful
13 possession without right with the intention to keep it
14 wrongfully.
15

16 Conversion, as used in this statute, is an un-
17 lawful and willful unauthorized assumption and exercise
18 of the right of ownership over property belonging to
19 another to the exclusion of the owner's rights. It is
20 any unlawful and willful unauthorized act which deprives
21 an owner of his property permanently or for an indefinite
22 period of time.

23 In other words, it is the act of actually appropri-
24 ating the property of another to his or her own beneficial
25 use or enjoyment or to that of a third person; there must
be a positive wrong or malfeasance.

4 Money rightfully taken into one's custody may be
5 converted merely by commingling it with the custodian's
6 own or that of a third person, if he or she was under a
7 duty to keep it separately and intact and if it was
8 done willfully, unlawfully and without authority.

9 Finally, with respect to the words unlawfully
10 and willfully abstracts: the word abstract means to take
11 or withdraw from. In order to constitute the offense it
12 is necessary that the money should be taken from its
13 proper place of custody without the knowledge and consent
14 of the proper custodian with the intent to injure or
15 defraud the custodian or deceive some officer thereof.

16 Now to get down to the actual counts in the indict-
17 ment, I am going to read you count one of the indictment
18 so you will understand the full nature thereof.

19 It is charged in count one of the indictment:

20 One. That at all times referred to hereinafter
21 the Brotherhood Welfare Fund of Local Union 3108, was
22 an employee welfare benefit plan, engaged in an industry
23 affecting commercing, or within the purview of the Welfare
24 and Pension Plans Disclosure Act, as amended, hereinafter
25 referred to as the Act.

Two. That at all times referred to in this indict-
ment Dominick Santiago was a trustee and administrator of

the Brotherhood Welfare Fund of Local Union 3108, all within the meaning of the Act.

Three. That at all times referred to in this indictment Renee Siminofsky was the bookkeeper and clerical employee of the Brotherhood Welfare Fund of Local Union 3108, all within the meaning of the Act.

Four. That between December 1, 1970 and December 31, 1971, Kenneth Bellsey was employed as a business agent of Local Union 3108.

Five. That from on or about the first day of January, 1968 and continuously thereafter up to and including the date of the filing of the indictment, in the Eastern District of New York and elsewhere, the defendant Dominick Santiago, the defendant Renee Siminofsky and the witness Kenneth Bellsey willfully and knowingly did combine, conspire, confederate, and agree together and with each other, and with divers other persons whose names are to the Grand Jury unknown, to commit an offense against the United States, that is, to embezzle, steal, and unlawfully and willfully convert to their own use and the use of the General Fund of Local 3108 the sum of \$14,777.03, the money and property of said Welfare Fund, all in violation of said Act, 18 U.S. Code 664 and 371, which I read to you.

You can't hear?

THE FORELADY: Sure, they can.

THE COURT: Paragraph Six. It was further a part of said conspiracy that Dominick Santiago and Renee Siminofsky would post Welfare Fund contributions of Authority Trucking & Rental Corporation to the cash receipts account of the General Fund of Local 3108.

Paragraph Seven. It was further a part of said conspiracy that Dominick Santiago and Renee Siminofsky would post Welfare Fund contributions of Bedford Bowl, Inc., to the cash receipts account of the General Fund of Local 3108.

Paragraph Eight. It was further a part of said conspiracy that Dominick Santiago and Renee Siminofsky would post Welfare Fund contributions of Caruso Foods, Inc., to the cash receipts account of the General Fund of Local 3108.

Paragraph Nine. It was further a part of said conspiracy that Dominick Santiago and Renee Siminofsky would post Welfare Fund contributions of Green Acres Bowl, Inc., to the cash receipts account of the General Fund of Local 3108.

Next paragraph. It was further a part of said conspiracy that Kenneth Bellsey would act as a business

agent for Local 3108 and receive part of his compensation from the Brotherhood Welfare Fund.

The overt acts:

At all times hereinafter mentioned, the defendants committed the following overt acts in furtherance of said conspiracy and to effect the objects thereof:

One. On or about June 22, 1968, within the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky obliterated the word Welfare from check No. 6662 issued by Caruso Foods, Inc.

Two. On or about December 10, 1969, within the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky entered check No. 10639 from Authority Trucking & Rental Corp. as a receipt to the General Fund of Local 3108.

That's the second overt act.

The third overt act: On or about April 20, 1969, within the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky entered check No. 11620 from Bedford Bowl, Inc., as a receipt to the General Fund of Local 3108.

The fourth overt act: On or about June 25, 1971, the witness Kenneth Bellsey received a check drawn on

the Brotherhood Welfare Fund.

That's Count One. Now, listen while I read to you what must be proven beyond a reasonable doubt with respect to that count.

The following are the essential elements which are required to be proved beyond a reasonable doubt in order to establish the offense of conspiracy charged in the indictment:

One. That there was an agreement or conspiracy between two or more persons to violate the law as charged in the indictment.

Two. That the conspiracy described in the indictment was willfully formed and was existing at or about the time alleged.

Three. That the conspiracy was so willfully formed and existing for the purpose of embezzling, stealing or unlawfully and willfully abstracting or converting to their own use or the use of the General Fund of Local 3108, monies and property of the Brotherhood Welfare Fund of Local Union 3108 as charged.

Four. That the accused willfully -- and, remember, when I say the accused, you must consider each charge with respect to each defendant -- that the accused willfully became a member of the conspiracy.

Five. That one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment at or about the time and place alleged.

Six. That such overt act was knowingly done in furtherance of some object or purpose of the conspiracy as charged.

Seven. That the defendant was knowingly and willfully a member of the conspiracy with the intent to further one or more of its objectives.

If the jury should find beyond a reasonable doubt from the evidence in the case that existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charge is complete, and it is complete as to every person found by the jury to have been willfully a member of the conspiracy at the time the overt act was committed regardless of which of the conspirators did the overt act.

The burden is always on the prosecution to prove beyond a reasonable doubt every essential element of the

2 crime charged.

3 Now, as to what a conspiracy is:

4 A conspiracy is a combination of two or more
5 persons, by concerted action, to accomplish some unlaw-
6 ful purpose. So, a conspiracy is a kind of "partnership
7 in criminal purposes," in which each member becomes the
8 agent of every other member. The gist of the offense
9 is a combination or agreement to disobey or to disregard
10 the law.

11 Here similarity of conduct among various persons,
12 and the fact they may have associated with each other,
13 and may have assembled together and discussed common
14 aims and interests, does not necessarily establish proof
15 of the existence of a conspiracy.

16 However, the evidence in the case need not show
17 that the members entered into any express or formal
18 agreement, or that they directly, by words spoken or
19 in writing, stated between themselves what their object
20 or purpose was to be, or the details thereof, or the
21 means by which the object or purpose was to be accom-
22 plished. What the evidence in the case must show beyond
23 a reasonable doubt, in order to establish proof that a
24 conspiracy existed, is that the members in some way or
25 manner, or through some contrivance, positively or

1 tacitly, ~~they~~ by a mutual understanding to try to
2
3 accomplish a common and unlawful plan.

4 The evidence in the case need not establish that
5 all the means or methods set forth in the indictment
6 were agreed upon to carry out the alleged conspiracy;
7 nor that all means or methods, which were agreed upon,
8 were actually used or put into operation; nor that all
9 of the persons charged to have been members of the
10 alleged conspiracy were such. What the evidence in the
11 case must establish beyond a reasonable doubt is that
12 the alleged conspiracy was knowingly formed, and that
13 one or more of the means or methods described in the
14 indictment were agreed upon to be used, in an effort
15 to effect or accomplish some object or purpose of the
16 conspiracy, as charged in the indictment; and that two
17 or more persons, including one or more of the accused,
18 were knowingly members of the conspiracy, as charged in
19 the indictment.

20 In your consideration of the evidence in the case
21 as to the offense of the conspiracy charge, you should
22 first determine whether or not the conspiracy existed,
23 as alleged in the indictment. If you conclude that the
24 conspiracy did exist, you should next determine whether
25 or not each of the accused willfully became a member of
 conspiracy.

R.3 1 If it appears beyond a reasonable doubt from
2 the evidence in the case that the conspiracy alleged
3 in the indictment was willfully formed, and that a
4 defendant unlawfully became a member of the conspiracy
5 either at its inception or afterwards, and that there-
6 after one or more of the conspirators committed one
7 or more overt acts in furtherance of some object or
8 purpose of the conspiracy, then there may be a convic-
9 tion even though the conspirators may not have succeeded
10 in accomplishing their common object or purpose and in
11 fact may have failed in so doing.
12

13 The extent of any defendant's participation,
14 moreover, is not determinative of his guilt or innocence.
15 A defendant may be convicted as a conspirator even
16 though he may have played only a minor part in the
17 conspiracy.
18

19 Now, an overt act is any act knowingly committed
20 by one of the conspirators in an effort to effect or
21 accomplish some object or purpose of the conspiracy.
22 The overt act need not be criminal in nature. It is
23 considered separately and apart from the conspiracy.
24 It may be as innocent as the act of a man walking
25 across the street, or driving an automobile, using a
 telephone. It must, however, be an act which follows

1
2 and tends towards accomplishment of the plan or scheme.
3 It must be knowingly done in furtherance of some object
4 or purpose of the conspiracy charged in the indictment.

5 Again, it is not necessary that all of the overt
6 acts charged in the indictment were performed. One overt
7 act is sufficient.

8 One may become a member of the conspiracy without
9 full knowledge of all the details of the conspiracy.
10 On the other hand, a person who has no knowledge of a
11 conspiracy, but happens to act in a way which furthers
12 some object or purpose of the conspiracy, does not there-
13 by become a conspirator.

14 Before the jury may find the defendants or any
15 other person has become a member of the conspiracy, the
16 evidence in the case must show beyond a reasonable doubt
17 that the conspiracy was knowingly formed, and that the
18 defendants, or other person who is claimed to have been
19 a member, willfully participated in the unlawful plan,
20 with the intent to advance or further some object or
21 purpose of the conspiracy.

22 To act or participate willfully means to act or
23 participate voluntarily or intentionally and with specific
24 intent to do something the law forbids. That is to say,
25 to act or participate with the bad purpose either to

disobey or to disregard the law. So, if a defendant or any other person, with understanding of the unlawful character of the plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant, a conspirator.

One who willfully joins in an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the jury should consider the actions and the declarations of all the alleged participants. However, in determining whether a particular defendant was a member of a conspiracy, if any, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of its members.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done, by any person likewise found to be a

1
2 member, may be considered by the jury as evidence in
3 the case as to the defendant found to have been a member,
4 even though the statements and acts made may have oc-
5 curred in the absence and without the knowledge of
6 the defendant, provided such statements and acts were
7 knowingly made and done during the continuancy of such
8 conspiracy, and in furtherance of some object or purpose
9 of the conspiracy.

10 Otherwise, any admission or incriminatory state-
11 ment made or act done outside of court by one person
12 may not be considered as evidence against any person
13 who was not present and did not hear the statement made
14 or see the act done. Therefore, statements of any
15 conspirator which are not in furtherance of the conspi-
16 racy or made before its existence or after its termina-
17 tion may be considered as evidence only against the
18 person making it.

19 The indictment charges a conspiracy among the
20 defendants Santiago and Sims and the witness Bellsey,
21 all of whom are named in the indictment as co-conspirators.
22 A person cannot conspire with himself, and, therefore,
23 you cannot find either of the defendants guilty unless
24 you find beyond a reasonable doubt that he or she parti-
25 cipated in the conspiracy as charged with at least one

1
2 other person. With this qualification you may find
3 both of the defendants guilty or one of the defendants
4 guilty and one not guilty, or both not guilty, all in
5 accordance with these instructions and the facts you
6 find.

7 Although the indictment charges a single con-
8 spiracy, it would be possible to find separate conspi-
9 racies, one relating to the willful combination and
10 conspiracy to knowingly and intentionally converting
11 money to a defendant's own use, and the other relating
12 to the willful combination and conspiracy to knowingly
13 and intentionally converting money to the use of the
14 Union. Whether there was one conspiracy, or two con-
15 spiracies, or no conspiracy at all, is a fact for you
16 to determine in accordance with these instructions.

17 I have instructed you as to the considerations
18 of the acts and declarations of one alleged conspirator
19 as evidence against another alleged conspirator. You
20 will not consider any such acts or declarations against
21 any defendant unless you find beyond a reasonable doubt
22 that the person doing the act or making the declaration
23 was a member of the same conspiracy as was that particular
24 defendant.

25 Now, on count two. And you will be pleased to

4 know that the instructions on count two are shorter
5 than they are on count one.

6 Count two charges in the indictment that:

7 From on or about February 1, 1969, up to and
8 including December 31, 1969, both dates being approxi-
9 mate and inclusive, in the Eastern District of New York,
10 the defendant Dominick Santiago and the defendant Renee
11 Siminofsky did embezzle, steal, and unlawfully and
12 willfully convert to their own use and the use of the
13 General Fund of Local 3108 the sum of \$3,148 of the
14 monies and funds of the Brotherhood Welfare Fund of
15 Local 3108, an employee welfare benefit plan established
16 and maintained by Authority Trucking & Rental Corpora-
17 tion, a body corporate, which was then an employer
18 engaged in an industry and activity affecting commerce
19 within the purview of the Welfare and Pension Plans
20 Disclosure Act, as amended, which said monies and funds
21 had come into the possession, and under the care of
22 the defendant Dominick Santiago and the defendant Renee
23 Siminofsky by virtue of their position as trustee and
24 bookkeeper, respectively, of such plan.

25 Now, the following are the essential elements
of the crime charged. I am not going to repeat these
after Counts 3, 4, 5 and 7. So listen to them because

they are applicable to each one of those counts. I will give you a brief description of the other counts, but the essential elements, I will not go through again.

The following are the essential elements of the crime charged which must be proven beyond a reasonable doubt:

One. Embezzlement or a stealing or unlawful and willful conversion or abstraction of welfare funds by the accused.

You noticed I put in "or." I defined those terms for you heretofore.

Two. A fraudulent intent on the part of the accused to deprive the Welfare Fund of its funds.

Three. A lack of bona fide authorization to the accused to deal with the funds as they did, or a lack of bona fide ratification of their acts by the trustees of the fund pursuant to the Welfare Fund's trust agreement.

Four. A lack of benefit to the Welfare Fund.

With respect to the question of bona fide authorization or ratification by the trustees, the fiduciary responsibility imposed upon the defendant Santiago by the law requires the defendant Santiago to follow the proper procedures to authorize or ratify

properly the funds. A Welfare official cannot be acting in good faith when not following his Welfare Fund's procedures for properly authorizing or ratifying expenditures. An elected Welfare official must know the proper procedures for conducting his Welfare Fund's business.

If, however, the accused in good faith believe that the funds were being used for Welfare Fund business and that the trustees had properly authorized the expenditures or would properly ratify them, then they did not violate the law and should be acquitted on this count.

And also the same would apply to Counts 3, 4, 5, and 7, as I indicated to you.

With respect to the language contained in the statute, "to his own use," or "to the use of another," you are instructed that the term, "to his use," or "to the use of another," does not require a showing that the money or property was appropriated to the personal use of the defendants; rather, it can mean that the money or property was used for purposes other than those purposes which the contributor intended it to be used for.

And particularly, you will recall here the

Government claims that in Counts 2 through 5, I believe, that they were used, and they were diverted to the Union fund in Count 7, as I recall, that is the count that pertains to the diversion of the funds to Mr. Bellsey, the business agent for the Union.

The defendant Dominick Santiago, as a trustee of an employee benefit plan, is held to a strict fiduciary duty to use those Welfare funds only in accordance with the trust agreement setting up the fund solely for the exclusive benefit of the employees and their dependents, and not for the benefit of the Union.

The fund is in no way an asset or property of the Union.

Any breach of this fiduciary duty by the defendant Dominick Santiago where you find that he acted with fraudulent intent and without proper authorization or in a manner that did not benefit the Welfare Fund, then you must find him guilty of violating 18 U.S. Code Section 664, bearing in mind all that I have given you by way of instructions in this section.

Now, Counts 3 through 5, and Count 7, as I indicated to you, involve the same essential elements of a crime. Count 3, you will recall, involves the dates from on or about February 1, 1968 up to and including

December 31, 1970. It charges both defendants with embezzling, stealing, and unlawfully and willfully converting and abstracting to their own use and the use of others the sum of \$2,392.56. It pertains to Bedford Bowl.

Count 4 involves the dates January 1, 1968 up to December 31, 1968, and charges both defendants with converting to their own use and the use of the General Fund of Local 3108 the sum of \$4,680. That pertains to Caruso Foods.

Count 5 is the date August 9, 1968, in the sum of \$543 against both defendants. And it involves Green Acres Bowl.

Count 7, you will recall, is from on or about December 1, 1970 up to and including July 1, 1971, that the defendant Dominick Santiago and the witness Kenneth Bellsey did embezzle, steal and unlawfully and willfully convert to their own use and to the use of the General Fund of Local 3108 the sum of \$3,049.89.

Those counts, again, are under the essential elements of the crime as I charged you in Count 2.

Next we go to Counts 8 and 6. As you recall, they were dismissed. So next we go to Count 9.

Let me read Count 9 of the indictment to you.

On or about the 30th day of January, 1969, in the Eastern District of New York, the defendant Dominick Santiago and the defendant Renee Siminofsky willfully did make a false statement of a material fact, knowing this to be false, in documents required by the Welfare and Pension Plans Disclosure Act, as amended, to be published, that is, copies of the annual report of the Brotherhood Welfare Fund -- that's the form D-2 -- an employee welfare benefit plan, established and maintained by Local 3108, an employee organization engaged in an industry affecting commerce, and Authority Trucking and Rental Corporation, Bedford Bowl, Inc., Caruso Foods, Inc., Green Acres Bowl, Inc., and United Recreation, Inc., and other body corporates, which are employers engaged in an industry and actively affecting commerce for the fiscal year ended August 31, 1968, in that Dominick Santiago and Renee Siminofsky stated and represented in said report, published, signed and sworn to by the defendant Santiago as trustee of such plan and prepared by the defendant Siminofsky as bookkeeper for the Fund that employer contributions to the Welfare Fund totalled \$51,174, whereas, in truth and in fact, they then knew the employers' contribution to the Fund totalled \$57,219.

Now, the essential elements of the crime charged which must be proved beyond a reasonable doubt in this count are:

One. The defendant in question made a false statement in the annual financial statement, the Form D-2, of the Welfare Fund, knowing the same to be false.

Two. That the false statement or statements, if such in fact they were, were false statements of material facts.

Count 10 is the same, but only it covers the next fiscal year, the fiscal year ended August 31, 1969. It charges both defendants with making false statements when they listed the contribution in the form D-2 at \$54,729.50, whereas in truth and in fact they knew the employer contributions to the Fund totalled \$59,263.50.

Again, the essential elements of the crime charged which must be proved beyond a reasonable doubt are:

One. That the defendant or defendants made the false statement in the annual financial statement, form D-2, for the fiscal year ended August 31, 1969, knowing the same to be false.

Two. That the false statement or statements, if such in fact they were, were false statements of material facts.

1
2 You will notice that in Counts 9 and 10 all that
3 is required is proof beyond a reasonable doubt that
4 the defendants Santiago and Siminofsky knew that he or
5 she or both were falsely misstating or failing to report
6 material facts in the so-called D-2 reports for those
7 two years.

8 Now, with respect to the accountant's testimony,
9 Mr. Bunsis, you are instructed that reliance on the
10 accountant, Donald Bunsis, who prepared the D-2 form,
11 which is the annual report required to be filed with
12 the Secretary of Labor, United States Department of Labor,
13 and the subject of Counts 9 and 10, is not a valid
14 defense, since the accountant testified that because he
15 was given a limited assignment as to all of the records,
16 it was not within his province to determine the factual
17 accuracy of those reports.

18 Now, with respect to the word "statement." A
19 statement, including a statement in a document is false
20 if it was untrue when made, and was then known to be
21 untrue by the person making it or who caused it to be
22 made. Further, a false statement may be made by
23 failing to report a material fact.

24 Now, Count 11, which is solely against Dominick
25 Santiago, reads:

1
2 From on or about the first day of January, 1968,
3 up to and including the 31st day of December, 1970,
4 in the Eastern District of New York, Dominick Santiago,
5 while an officer, that is, president of Local Union
6 No. 3108, a labor organization engaged in industry
7 affecting commerce, as defined by Sections 402(i) and
8 402(j) of Title 29, United States Code, unlawfully and
9 willfully did embezzle, steal, abstract and convert to
10 his own use the sum of \$891.18 of the monies and funds
11 of such organization.

12 Now, the essential elements of the crime charged
13 in this count which must be proved beyond a reasonable
14 doubt against the defendant Santiago are as follows:

15 One. An embezzlement, or a stealing, or an
16 unlawful and willful conversion, or unlawful and
17 willful abstraction of Union funds by the accused.

18 Two. A fraudulent intent on the part of the
19 accused to deprive the Union of its funds.

20 Three. A lack of bona fide authorization to the
21 accused to deal with the funds as he did or a lack of
22 bona fide ratification of his acts by the Union pursuant
23 to the Union's constitution and by-laws.

24 Four. A lack of benefit to the Union.

25 With respect to the question of bona fide

1 authorization or ratification by the Union, the fidu-
2 ciary responsibility imposed upon the accused by the
3 law requires the accused to follow the procedures to
4 authorize or ratify properly the expenditures of funds.
5 A union official cannot be acting in good faith when
6 not following his union's procedures for authorizing
7 or ratifying procedures properly. An elected union
8 official must know the proper procedures for conducting
9 his union's business.
10

11 If, however, the accused in good faith believed
12 that the funds were being used for union business and
13 that the union had properly authorized the expenditures
14 or would properly ratify them, then he did not violate
15 the law and should be acquitted on this count.

16 However, in determining whether or not Mr. Santi-
17 ago did in fact have such good faith, you must take
18 into account the nature of the expenditures incurred
19 in Montreux, Switzerland, St. Thomas, Virgin Islands,
20 Chicago, Illinois, Paris, France, and at Field Bros.,
21 and whether these expenditures did, in fact, benefit
22 the Union, a determination which would be relevant to
23 Santiago's possible good-faith belief that they did.

24 Now, as to Count 13 of the indictment -- Count 12,
25 you will recall, was dismissed.

Count 13 reads as follows: And Count 14 is very much like it. So I won't read both of them.

Count 13: On or about the 23rd of September, 1968, in the Eastern District of New York, the defendant Dominick Santiago, being an officer, that is, president of Local 3100, and the defendant Renee Siminofsky, being secretary-treasurer of that union, a labor organization engaged in an industry affecting commerce within the meaning of Sections 402(i) and (j), Title 29, United States Code, willfully and knowingly did make and cause to be made, a false entry in a record required to be kept by the said labor organization pursuant to Section 436, Title 29, United States Code, in that in the cash receipts book and general ledger, they did enter and record, and cause to be entered and recorded \$1,000 item as dues and initiation fees, which said entry was false and fictitious, as the defendants then knew.

It also cites the aiding and abetting Section 2 which I will discuss with you later.

The essential elements of the crime charged in Count 14 which must be proved beyond a reasonable doubt are as follows:

One. The defendant in question willfully made or caused to be made a false entry in a record, report or

statement required to be kept by Local 3108 pursuant to law, knowing the same to be false.

Two. Such report or statement was required to be kept by Local 3108 by law.

Three. Such false entry, if such in fact was made, was a false entry of a material fact or matter.

Now, the same essential elements are required to be proved under Count 14 which, as you recall, states on or about October 20, 1968, the two defendants made or caused to be made a false entry in a record required to be kept in the cash receipts book and general ledger, in that they did enter and record \$1500 as dues and initiation fees, which said entry was false and fictitious, as the defendants then knew.

You will notice that in Counts 13 and 14 all that is required is proof beyond a reasonable doubt that the defendants Santiago or Siminofsky, or both, knew that they were falsely misstating or failing to report material records, material facts in the union records required to be kept by law.

(Continued on next page.)

3aml
gr/nc

THE COURT: (Continuing) Section 2 of Title 18 of U. S. Code -- I referred to that several times -- this section is referred to and is cited in Counts 2 through 5, 7, 13 and 14, if I recall it correctly. 2 through 5, 7 and 13 and 14.

Section 2 provides that: "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

"Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal."

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged. In other words, every person who wilfully participates in the commission of a crime may be found guilty of that offense.

Participation is wilful if done voluntarily and intentionally and with a specific intent to do something the law forbids, or with a specific intent to fail to do something the law requires to be done.

That is to say, with bad purpose either to disobey or to disregard the law.

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In order to aid and abet another to commit a crime, it is necessary that the accused wilfully associate himself in some -- or herself -- in some way with the criminal venture and wilfully participate in it as he or she would in something he or she wishes to bring about.

That is to say, if he or she wilfully seeks by some act or omission of his or hers to make the criminal venture to succeed.

An act or omission is wilfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or with a specific intent to fail to do something the law requires to be done.

That is to say, with bad purpose either to disobey or to disregard the law.

You, of course, may not find either defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons and that the defendant participated in its commission.

By way of example -- we do not really have it here, but the law says that mere presence at the scene of a crime and knowledge that a crime is being

committed are not sufficient to establish the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason. The purpose of adding the word knowingly was to insure that no one would be convicted for an act done because of mistake or accident or other innocent reason.

As stated before, with respect to an offense such as charged in this case, specific intent must be proved beyond a reasonable doubt before there could be a conviction.

An act is done wilfully if done voluntarily and intentionally and with the specific intent to do something the law forbids. That is to say, with bad purpose either to disobey or to disregard the law.

Furthermore, an act committed knowingly and wilfully is one committed with a wrongful purpose. This may be established if the accused knew what the law required but failed to comply with it or if it accused acted with reckless disregard of the law's requirements.

Reckless disregard of the law may be defined as closing of one's eyes or indifference or a refusing to be informed.

You may infer knowledge and wilfulness from the various facts and circumstances which you find to have been proven, including, for example, the failure to maintain or preserve required records, if you find such failure to have been proven against the accused.

Knowledge and wilfulness, however, may not be established if the failure to maintain or preserve the required records resulted from mere negligence or oversight or the wrongful acts of another. Knowledge and intent ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind.

But you may infer a defendant's knowledge and intent from the surrounding circumstances. You may consider any statement made and done or omitted by a defendant and all other facts and circumstances in evidence which indicate his or her state of mind.

It is ordinarily reasonable to infer that a person intends the natural and probable consequences of his acts knowingly done or knowingly omitted.

Now, during the course of the trial I have

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on several occasions stated to you that certain evidence would be received only on the question of the defendant's knowledge, wilfullness and intent. Thus, proof of similar evidence not charged in the indictment, both before July 25, 1968, i.e., the date of the application of the statute of limitations and at or about the time the acts charged in the indictment occurred, was admitted for this purpose and in each instance, the Court endeavored to point out this fact and said that it would give a special instruction to you with respect to this evidence at the conclusion of the case.

This special instruction is as follows:

The fact that the accused may have committed another offense at or about the same time is not any evidence or proof whatever that at another time the accused committed the offense charged in the indictment, even though both offenses are of a like nature.

Evidence as to an alleged earlier or later offense of a like nature may not, therefore, be considered by the jury in determining whether the accused did the act charged in the indictment.

Nor may any such evidence be considered for any purpose, whatever, unless the jury first find that

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other evidence in the case, standing alone, establishes beyond a reasonable doubt that the accused did the act charged in the indictment, leaving aside only the question of whether the accused did it knowingly, intentionally and wilfully.

If the jury should find beyond a reasonable doubt from the other evidence in the case that the accused did the act charged in the indictment, then the jury may consider the evidence as to an altered earlier or later offense of a like nature in determining the state of mind, knowledge, intent or wilfulness with which the accused did the act charged in the indictment.

And where all the elements of an alleged earlier or later offense of a like nature are established by evidence which is clear and conclusive, the jury may, but is not obliged to, draw the inference and find that in doing the act charged in the indictment, the accused acted wilfully, knowingly and with specific intent and not because of mistake, or accident or other innocent reason.

Statements and argument of counsel are not evidence in the case unless made as an admission or stipulation of fact. When the attorneys on both sides

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1 stipulate or agree as to the existence of a fact,
2 you must, unless otherwise instructed, accept the
3 stipulation as evidence and regard that fact as
4 proved. Those are the stipulations here which have
5 been marked in evidence.
6

7 The Court may take judicial notice of certain
8 facts or events. When the Court declares it will
9 take judicial notice of some fact or event, you may
10 accept the Court's declaration as evidence and regard
11 as proved the fact or event which has been judicially
12 noticed but you are not required to do so, since you
13 are the sole judge of the facts.

14 Unless you are otherwise instructed, the
15 evidence in the case always consists of the sworn
16 testimony of the witnesses, regardless of who may
17 have called them; and all exhibits received in evidence,
18 regardless of who may have produced them: and all
19 facts which may have been admitted or stipulated
20 and all facts and events which may have been judicially
21 noticed and all applicable presumptions stated in
22 these instructions.

23 Any evidence as to which an objection was
24 sustained by the Court and any evidence ordered stricken
25 by the Court must be entirely disregarded. Evidence

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does include, however, what is brought out from witnesses on cross-examination as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. You are to consider only the evidence in the case and your verdict is to be based on the evidence only, but in your consideration of the evidence, you are not limited to the bald statements of the witnesses.

In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts which you find to have been proved, such reasonable inferences as you feel are justified in the light of your experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

If a lawyer asks a question which contains an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyer's statements are not evidence. You, as jurors, are the sole judges

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of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified and every matter in evidence which tends to show whether a witness is worthy of belief.

Consider each witness' intelligence, motive and state of mind and demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters.

Consider, also, any relation each witness may bear to a particular side of the case, the manner in which each witness might be affected by the verdict and the extent to which, if at all, each witness is either supported by or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently

1
2 and innocent misrecollection, like failure of recol-
3 lection is not an uncommon experience.

4 In weighing the effect of a discrepancy always
5 consider whether it pertains to a matter of importance
6 or an unimportant detail and whether the discrepancy
7 results from innocent error or intentional falsehood.

8 The testimony of a witness may be discredited
9 or impeached by showing that he or she previously
10 made statements which are inconsistent with his or
11 her present testimony. The earlier contradictory
12 statements are admissible only to impeach the credi-
13 bility of the witness and not to establish the truth
14 of these statements.

15 It is the province of the jury to determine
16 the credibility, if any, to be given to testimony of
17 a witness who has been impeached. If a witness is
18 shown knowingly to have testified falsely concerning
19 any material matters, you have a right to distrust
20 such witness' testimony in other particulars and you
21 may reject all of such testimony of that witness or
22 give it such credibility as you think it deserves.

23 The rules of evidence ordinarily do not permit
24 witnesses to testify as to opinions or conclusions.

25 An exception to this rule exists as to those whom we

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call expert witnesses. Witnesses who by education and experience have become expert in some art, science, profession or calling may state their opinions as to relevant, material matter in which they profess to be expert and may also state their reasons for the opinion.

You should consider each expert opinion in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or if you feel it is outweighed by other evidence, you may, of course, disregard the opinion entirely.

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence.

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As stated before, you are the sole judges
of the credibility of all witnesses and the weight
and effect of all evidence.

(continued next page.)

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Charge of the Court.

THE COURT (Cont'd): When the Court has sustained an objection to a question addressed to a witness, the Jury must disregard the question entirely and may draw no inference in the wording of it or speculate as to what the witness would have answered if he had been permitted to answer any question.

The fact that the Court has asked one or more questions of a witness for clarification or admissibility of evidence purposes is not to be taken by you in any way as indicating the Court has any opinion as to the guilt or innocence of the defendants in this case. And you are to draw no such inference therefrom. The Court has no such opinion. That determination is up to you and you alone, based upon all of the facts in the case and the applicable law in these instructions.

Now, before giving you one or two final instructions of a general nature, let me go back just quickly to Count 13 and Count 14, because I believe I omitted inadvertently to give you one request to charge proposed by the Government with respect to those counts.

You recall that among the essential elements in 13 and 14 -- I will read the essential elements

2 Charge of the Court

1 to you again on 13 and 14, namely, the defendant
2 in question willfully made or caused to be made a
3 false entry in a record, report or statement required
4 to be kept by Local 3108 pursuant to law, and knowing
5 the same to be false.
6

7 2. Such record, report or statement was
8 required to be kept by Local 3108 by law.
9

10 3. Such false entry, if such in fact it was,
11 was a false entry of a material fact or matter.
12

13 That is in 13 and 14.

14 As to this second of those elements, that is,
15 whether the cash receipts book is a record required
16 to be kept by the statute, I instruct you, as a
17 matter of law, that if you find that the record was
18 used by Local 3108 to verify the statement of receipts
19 recorded on Local 3108's annual report to the Secretary
20 of Labor, which has been referred to as LM-2, then
21 it was a record which was required to be kept by
22 statute.
23

24 I inadvertently failed to give you that
25 specific instruction and I give it to you now.

As to the final general instructions, you are
here to determine the guilt or innocence of the ac-
cused from the evidence in the case. You are not

3 Charge of the Court

called upon to return a verdict as to the guilt or innocence of any other person or persons.

So if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are guilty. But if any reasonable doubt remains in your minds after impartial consideration of all of the evidence in the case, it is your duty to find the accused not guilty.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself and herself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest convictions as to the weight or

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effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the Jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon retiring to the Jury Room, the lady seated closest to me in the front row seat here will act as your foreman or forelady, I should say, unless she elects not to do so in which case you will elect one from among your number.

The forelady or foreman, if you elect someone else, will preside over your deliberations and will be your spokesman here in Court.

Remember at all times you are not partisans. You are judges, judges of the facts. Your sole interest is to seek the truth from the evidence in the

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case.

There is nothing peculiarly different in the way a Jury should consider the evidence in a criminal case from that which all reasonable persons treat any question depending upon evidence presented to them.

You are expected to use your good sense. Consider the evidence in the case for only those purposes for which it has been admitted and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so. You must render a verdict with respect to each of the eleven remaining counts of the indictment that I have described to you, eleven of which contain charges against Dominick Santiago and nine of which contain charges against Mrs. Siminofsky.

If It becomes necessary during your deliberations to communicate with the Court, you may send a note by a deputy marshal signed by your forelady or by one or more members of the Jury.

No member of the Jury should ever attempt to

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Charge of the Court

communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the Jury on any subject touching the merits of the case, otherwise than in writing or orally here in open Court.

You will note from the oath which will be taken shortly by the deputy marshals that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the Jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person not, even to the Court, how the Jury stands numerically or otherwise on the question of the guilt or innocence of the accused, until after you have reached a unanimous verdict.

That is the charge of the Court.

X X X X
Now, ladies and gentlemen, we will take about a five-minute break during which you all go back to the Jury Room, and do not discuss the case until after I have called you, discharged the alternatives and had the deputy marshal sworn.

During that five minutes, I have certain things to discuss with counsel and then I will recall you.

1 All right. You want to bring the jury back in.

2 THE CLERK: Yes sir.

3 ~~X X X~~
(Whereupon, the jury entered the courtroom.)

4 THE COURT: Now, ladies and gentlemen, there
5 is one additional request the Government has requested
6 which they are entitled to, which I will read to you.

7 The various counts in the indictment make
8 reference to specific amounts of money. Ordinarily,
9 it is not necessary to establish a precise amount
10 alleged in the indictment and the prosecution may
11 succeed by establishing some substantial amount, which
12 may be more or less than the amount charged in the
13 indictment or in the counts of the indictment.

14 With that addition, the charge is complete.
15 Now, the alternates are excused. And they should take
16 their cards down to the Central Jury Room.

17 You go with the thanks of the Court for your
18 service. As you saw, we went through three alternates
19 but we didn't get three more people, or you would have
20 had to serve. But your services are very much
21 appreciated. And you can go with the deep appreciation
22 of the Court.

23 Thank you.

24 (Whereupon, three alternate jurors were excused.)

25 ~~X X X X~~
THE COURT: All right. Now, you swear in

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NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

DOMINIC SANTIAGO,

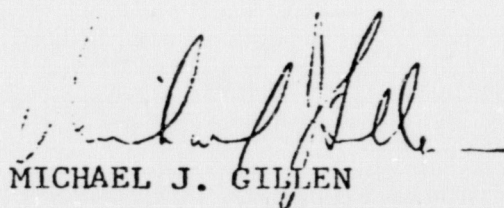
Defendant.

73 CR 702

NOTICE OF APPEAL

Notice is hereby given that the defendant, DOMINIC SANTIAGO, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this proceeding on the 11th day of April, 1975.

Dated: April 18, 1975.



MICHAEL J. GILLEN

GRUNEWALD, TURK, GILLEN & FORD
Attorneys for Defendant -
Dominic Santiago
233 Broadway
New York, New York 10007

Two (2)
Service of three ~~(3)~~ copies of the within
is hereby admitted

this day of

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Attorney(s) for

RECEIVED
UNITED STATES DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

JUN 26 2 22 PM '75

EASTERN DISTRICT
OF NEW YORK

P. C. Ancone



